

## RENTER'S HANDBOOK ON EVICTIONS IN COURT

This handbook is for general educational use only. It is not a substitute for the advice of an attorney. If you would like advice about your case, you must contact a lawyer. Contact information for legal aid programs is available at the end of this handbook.

If you get court papers from your landlord, free legal help may be available from the Eviction Defense Project. You can call the Eviction Defense Project at 888-585-9638 and leave a message Monday-Friday from 9-1PM. Or you can fill out a web form at <https://oregonlawcenter.org/eviction-defense-project/> at any time.

There is a one year statute of limitations on all claims brought under the Oregon Residential Landlord and Renter Act. To sue your landlord for claims under this Act, you must file your claims in court within one year of the date that your landlord violated the Act.

The most important things to remember are:

### **Go to court and be on time**

Even if you have already moved out, you must still go to court and tell the judge that you've moved. If you do not go to court or are late to court and your landlord is there, you will lose automatically. This means your rental record will show an eviction and you may have trouble renting in the future.

No matter what your situation is, it is best to go to court. You should go even if you do not think you can win your case or if you plan to move out. If you go to court you may be able to get more time to move and/or avoid getting an eviction on your record. You can also get more time to pay any back rent that you owe. If you have not moved out yet, the judge will encourage you and your landlord to reach an agreement without a trial. **If your case is based on nonpayment, and you pay the landlord what they say you owe, the judge should dismiss the case.**

Most cases are settled without a trial. Even if you expect your landlord to win, you have something to gain by going to court.

### **Make sure you will be able to keep any agreement that you reach with your landlord**

At court, the judge will encourage you and your landlord to reach an agreement without a trial. If you reach an agreement with your landlord, make sure you will be able to keep it! This kind of agreement is called a "stipulated agreement" and will be presented to the judge. Once the judge signs it, it is the court order. If you are unable to keep any part of the agreement, your landlord can go back to court and evict you very quickly, and you will have little opportunity to defend yourself.

If you are trying to reach an agreement with your landlord but your landlord keeps suggesting an arrangement that you cannot stick to, in some counties you can ask for a mediator to help. Try to reach an agreement that will really work for you.

**If you ask for a trial, and then decide to move out, you must still show up for your court date**

If you ask for a trial, and then change your mind and move out, you must still show up for your court date. If you show up and tell the judge that you've moved out, the case must be dismissed. But if you don't show up, the landlord will win automatically. You will have an eviction on your record, and could be ordered to pay your landlord's court costs and attorney's fees.

**You have the right to pay money owed to your landlord at any time up until the trial is over**

If an eviction is based on **nonpayment** (not on anything else) and you or a rent assistance provider are able to pay the landlord the amount they say you owe on the termination notice, your case should be dismissed. The landlord is not allowed to refuse to accept payment until the trial is over.

**Footnotes**

Throughout this handbook, there are footnotes that give you the applicable Oregon law (known as the Oregon Revised Statutes). These citations provide you first with the chapter number followed by a period and then the section number. For example, ORS 90.100 means that it is in Chapter 90 of the Oregon Revised Statutes, Section 100. You can find the law online at:

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors090.html](https://www.oregonlegislature.gov/bills_laws/ors/ors090.html)

## Table of Contents

Eviction Process Overview .....	4
Part I: First Appearance .....	6
Do I have to go to <i>First Appearance</i> ? .....	6
What Happens at <i>First Appearance</i> ? .....	6
Agreements With Your Landlord (Stipulated Agreements) .....	8
Part II: Asking for a Trial .....	10
Trials Overview .....	10
Using the form <i>Answer</i> .....	11
How to Decide What Defenses You Can Claim .....	11
Defenses to an Eviction .....	13
What Do I Do With the <i>Answer</i> ? .....	18
Preparing Your Case .....	19
What If I Remember Something Later? .....	19
Should I Ask For a Jury Trial? .....	19
Paying Rent Into Court .....	20
Curing a nonpayment eviction with payment .....	20
PART III. Trials .....	21
How a Trial Works .....	21
Opening Statements .....	21
Your Landlord’s Case .....	21
Your Case .....	21
Rebuttal .....	22
Closing Arguments .....	22
The Trial Judgment and What It Means .....	22
PART IV: After the trial .....	24
Additional Resources .....	25
Private attorneys who represent renters .....	26

### Eviction Process Overview

Step	Options
Step 1 – Landlord gives renter a notice to move out (called a “Termination Notice”)	<ul style="list-style-type: none"> <li>• Settle and stay</li> <li>• Move out</li> <li>• Decide to fight eviction in court</li> </ul>
Step 2 – If the renter does not move out by the move out date in the Termination Notice, landlord files an eviction complaint against renter	
Step 3 – Renter served with Summons to appear in court at <i>First Appearance</i>	<ul style="list-style-type: none"> <li>• Settle and stay</li> <li>• Pay money owed and stay (<b>for nonpayment case only</b>)</li> <li>• Move out</li> <li>• Decide to fight eviction in court</li> </ul>
Step 4 – <i>First Appearance</i> at court	<ul style="list-style-type: none"> <li>• Report settlement</li> <li>• Ask for mediation</li> <li>• Ask for time to move</li> <li>• Ask for trial</li> <li>• Pay money owed, case is dismissed (<b>for nonpayment case only</b>)</li> <li>• Case dismissed because landlord does not show up</li> <li>• Landlord wins because renter does not show up</li> </ul>
Step 5 – File an <i>Answer</i>	
Step 6 – Trial	<ul style="list-style-type: none"> <li>• Renter wins and gets to stay</li> <li>• Renter pays back rent and gets to stay (<b>for nonpayment cases only</b>)</li> <li>• Landlord wins and renter has to move in four days</li> </ul>

#### If the landlord wins...

Step 6 – Court orders renter to move (called a “Judgment of Restitution”).	<ul style="list-style-type: none"> <li>• Renter moves</li> <li>• Renter stays past date in order.</li> <li>• Sheriff can remove renter if renter stays past date in order</li> </ul>
Step 7 – Sheriff removes renter from the property. Landlord moves renter’s belongings and sends renter abandoned property notice.	<ul style="list-style-type: none"> <li>• Renter contacts landlord within 5 days (8 days if notice served by mail) and arranges to get belongings back within 15 days</li> <li>• If renter fails to claim belongings in 15 days, landlord can sell or dispose of belongings</li> </ul>

The technical term for an eviction case is *Forcible Entry and Detainer* (“FED”). If you hear the term “FED” in court or elsewhere, it refers to the legal process of eviction.

An eviction starts with a set of legal papers (a Summons and a Complaint).<sup>1</sup> The legal papers will require you and the landlord to appear in court on a certain date because your landlord wants to get a court order to evict you from the place you are renting. The court date shown in the legal papers is called a *First Appearance*. The legal papers will be served to you by the Sheriff who will either post the eviction papers on your door or personally hand them to you. You will also be mailed a copy of the legal papers.

The complaint was filled out by the landlord and is attached to the summons. It states the reason the landlord believes you no longer have a right to remain in the place you rented. Your landlord must also attach a copy of the Termination Notice which he or she gave you before filing a lawsuit.<sup>2</sup> The landlord can only file an eviction once the date to move out in the Termination Notice has passed and you have failed to move out. If the date has not passed yet, you have a defense to the eviction.

The FED is *not* a lawsuit for money even though you may owe back rent.<sup>3</sup> Back rent could be the *reason* the landlord is going to court to evict you, but your landlord cannot force you to pay back rent as part of the eviction court case. If your landlord wants to get the back rent, he or she will have to sue you for it separately unless you agree to pay it voluntarily (for example, in a stipulated agreement). However, if the case is based on nonpayment, you can pay the landlord at any time up until the trial and the case should be dismissed. **If you pay your landlord after the eviction case is filed, be sure to get a receipt.**

If the landlord wins, however, they can get a money judgment for court costs (service fee, filing fee, etc.), and if they hire an attorney the court can order you to pay the attorney fees.

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<sup>1</sup> 105.113

<sup>2</sup> 105.124

<sup>3</sup> 105.110

## PART I: FIRST APPEARANCE

### Do I have to go to *First Appearance*?

You should always go to *First Appearance*!!

The legal papers will tell you the date and time that both you and the landlord are required to appear at *First Appearance*. No matter what your situation is, you stand to gain from showing up in court. Make sure you get to court on time. Some courthouses can have long lines to get through security so you should plan on being there early.

When you show up to court, you'll have the opportunity to tell the judge you've moved, tell the judge you've paid what you owe, make a deal with the landlord, or ask for a trial.

If you do not show up in court and your landlord does, your landlord will win automatically.<sup>4</sup> This means you will have to move. If you do not move voluntarily, the landlord will have the court post a notice stating that the sheriff will remove you in four days.<sup>5</sup> If you move without taking your belongings, your landlord can have your belongings moved out of the rental unit and into storage until you either claim them or give up the right to have them returned (see pg. 23 below).<sup>6</sup>

If you have a good reason for missing the *First Appearance* and you act quickly, you may be able to have the default judgment in favor of the landlord set aside.<sup>7</sup> You will need to go to speak with the court clerk as soon as possible after your missed *First Appearance* and ask for the paperwork to fill out if you missed *First Appearance*. You will have to appear in front of the judge to explain why you missed your *First Appearance*. If the judge finds that you had good cause for missing your court date, he or she will give you a new court date.

If you show up at *First Appearance* and your landlord does not, you should request that the case be "*dismissed with prejudice*."<sup>8</sup> It is in your interest to go to the *First Appearance* even if you believe your landlord may not show up. If your landlord has a good reason for missing the *First Appearance*, he or she may also be able to get the case reinstated. If this happens, you will get a card in the mail setting a new date and time for you to show up in court.

If neither you nor your landlord show up, the case will also be dismissed.

### What Happens at *First Appearance*?

The way *First Appearance* is handled varies from judge to judge. The purpose is to let the court know whether:

- the renter has moved;

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<sup>4</sup> 105.137(1)

<sup>5</sup> 105.151(1)

<sup>6</sup> 90.425(7)

<sup>7</sup> ORCP 71

<sup>8</sup> ORCP 54(B)(4), saying that unless the court otherwise specifies a dismissal is without prejudice

- the renter plans to move shortly;
- the renter has paid or can pay the amount the landlord says they owe (for nonpayment cases only)
- the landlord wants to dismiss the case;
- the landlord and renter have agreed to settle the case; or
- the renter requests a trial.

When you get to the courthouse go straight to the courtroom and find a seat. Be sure to shut off your cell phone or other electronic device. The judge will begin to call the names of all the people who are scheduled for *First Appearance*. When you hear your name, stand up and tell the judge that you are present and that you are the defendant. Do not leave the courtroom until your name has been called and the judge knows you are there.

Most judges will start by explaining how the court process will work. After your name is called, the judge may encourage you and your landlord to see if you can reach an agreement that will resolve the case. If you have not settled the case already when your name is called, and you do not already have a lawyer, you should talk to your landlord (or your landlord's lawyer) to try to reach an agreement. If you cannot reach an agreement with your landlord, you may want to ask your landlord if they would be willing to go to mediation.

When the judge calls your name and you have answered "present," you may:

1. Report a Settlement: If you and your landlord reached a settlement before you got to court, then you should tell the judge the details of the agreement. The judge will issue a formal court order to enforce the terms of the agreement. You will have to obey the order. The renter usually cannot change or challenge this type of order. Before you sign such an agreement you should see the section on *Agreements With Your Landlord* below.
2. Pay the landlord or tell the court that you've paid: If the eviction is based on nonpayment, and you paid your landlord the full amount they say you owe, or if rent assistance has paid that amount, the case should be dismissed. If you have the money with you to pay the landlord, the landlord has to accept the full payment and dismiss the case. **Your landlord does not have the right to refuse payment of the full amount they said you owe on the termination notice.** Your landlord does have the right to refuse a partial payment.
3. Talk to Your Landlord to Reach a Settlement: If you did not reach an agreement with your landlord before you got to court, then the judge may ask you to try and work things out. If you are having trouble negotiating with your landlord, you may want to see if the landlord would be willing to talk to a mediator. If you reach an agreement with your landlord, see the section on *Agreements With Your Landlord* below for more information. When you have reached an agreement, you must return to the courtroom to tell the judge about it.

4. **Ask That the Case Be Dismissed:** If your landlord is not present, you should ask the judge to “dismiss the case with prejudice.” You may get a card later in the mail telling you to return to court if the landlord had a good reason for missing the *First Appearance*.
5. **Report That You Have Moved:** If you have moved already, tell the judge that you have moved already and ask the judge to “dismiss the case with prejudice.”
6. **Ask for a Trial:** If you are unable to work out an agreement with your landlord, you may ask for a trial. If you do think you want a trial, you should consider this decision carefully and review the section on trials.

### Agreements With Your Landlord (Stipulated Agreements)

It may be to your advantage to make an agreement with your landlord rather than go to trial. If you reach an agreement, you and your landlord will need to write it down and both sign it. You will then present it to the judge who will review it and make sure you understand the agreement. It will then become the court *Order* and can be enforced by the landlord by going back to court. If your landlord says you failed to keep the agreement, you can be evicted very quickly. You should be sure that your agreement is one that you can realistically keep.

Things to keep in mind when making agreements with your landlord:

- If you owe your landlord money, part of your agreement will probably be that you will pay your landlord what you owe. Your agreement can include any amount of back rent you owe, but it cannot include anything about *future* rent for more than three months from the date of the agreement.<sup>9</sup> Also, if you set up a repayment schedule for past due rent or other monies owed, this schedule cannot last for more than six months.<sup>10</sup> **If you have the money to pay your landlord the amount they say you owe on the termination notice, you do not have to make a stipulated agreement.** If you pay the landlord in full, the case must be dismissed.

*For example, if you are at First Appearance on September 10 and owe your landlord \$600 in back rent, your agreement could state that you will pay \$100 per month for the next six months. Your repayment schedule could not bind you to pay \$50 per month for twelve months, because a payment schedule for money owed cannot last more than six months from the date you come to court. The agreement could also say that you will pay your rent for October, November, and December on time. However, your agreement could not say that you will also pay the rent for January or February on time because that is more than three months from the date of the agreement. If you did not pay rent in January or February on time your landlord would have to go through the regular eviction procedure (although you would still have to pay the \$100 towards back rent for these months to avoid an eviction for noncompliance).*

- Your agreement may say that you will abide by other provisions of your rental agreement besides repaying your landlord money you owe. For example, you might agree not to have loud parties

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<sup>9</sup> 105.146(2)(c)

<sup>10</sup> 105.146(2)(b)



during quiet hours or not to have guests stay with you for longer than the rental agreement allows. Your landlord cannot ask you to do these things for more than six months past the date of the agreement.<sup>11</sup>

Regardless of what your agreement is, the eviction case will be dismissed by the court after 12 months if you follow the terms of the stipulated agreement.<sup>12</sup> When you present the stipulated agreement to the judge, you can ask that case be dismissed earlier than 12 months: such as one month after the last date you are agreeing to do something under the stipulated agreement. It is always better for the renter to have the case dismissed as soon as possible. If you comply with the terms of the stipulated agreement and no further action is taken, you will not have an eviction judgment on your record once the case is dismissed.

If you don't follow the Agreement exactly, the landlord can go back to court and get an automatic judgment of eviction. You will get a notice from the court that says you have to move out in four days. There will be a judgment of eviction on your record, and you may have to pay your landlord's court cost's and attorney's fees.

If you believe that you have followed the agreement with your landlord, and you get a notice from the court that says you have to move out, or if you believe that you have a defense to your failure to follow the agreement, go down to the Courthouse immediately and ask for a hearing. At the hearing you can give evidence that you actually did follow the agreement, as well as other defenses, including whether:<sup>13</sup>

- Your landlord agreed to change the stipulated agreement;
- Your landlord failed to do his or her part of the stipulated agreement which caused you to be unable to follow the terms of the agreement;
- Your landlord prevented you from complying with the stipulated agreement;
- The agreement was made in bad faith or is "unconscionable" under the law;
- You have monetary claims under the Oregon Landlord Renter Act that have arisen after the date that the court entered the stipulated agreement and those claims offset the amount of rent owed; or
- Compliance with the stipulated agreement would conflict with other rights you have in your tenancy
  - *For example, if you live in public housing you cannot sign away your right to "good-cause only" eviction, even with a stipulated agreement which might indicate that such rights had been waived.*

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<sup>11</sup> 105.146(2)(a)

<sup>12</sup> 105.146(3) and 105.146(7)(b)

<sup>13</sup> 105.149

## PART II: ASKING FOR A TRIAL

### Trials Overview

If you do ask for a trial you should be sure you have a legal defense, or that you are confident that you can

- 1) move out before the trial date or
- 2) pay all of your back rent by the trial date, if the case is based on nonpayment.

If you can prove one of the following then you may have a defense:

- That there is something legally wrong with the landlord's termination notice;
- That your landlord's complaints are not true;
- That the rental unit was not properly maintained;
- That the termination notice was not delivered properly;
- That your landlord is evicting you because you are a victim of domestic violence, stalking or sexual assault;
- That the landlord is evicting you because you are a member of a protected class under fair housing laws;
- That your landlord entered your unit unlawfully; or
- That your landlord shut off your utilities or otherwise violated the law;
- That your landlord prevented you from paying the rent.

You should carefully consider whether you want to ask for a trial. Ask a lawyer for advice. Read this booklet carefully to determine whether your defense is likely to win.

If you ask for a trial and lose, you may have to pay the landlord's court costs and attorney fees.<sup>14</sup> Your obligation to pay these costs will last for ten years (and this period of time may be extended). If you earn only minimum wage and you do not have valuable possessions, it will be difficult for a landlord to collect this money. If you do not ask for a trial at *First Appearance* then your landlord cannot collect attorney's fees unless you have agreed to pay these fees as part of a stipulated agreement or you fail to follow the terms of the agreement and lose at a hearing on whether you have a defense to not following the agreement.

If you ask for a trial, you must file an *Answer*.<sup>15</sup> The clerk will give you an *Answer* form if you do not have a lawyer. *Answer* forms are also usually available in the courtroom where your *First Appearance* is held. You must fill out the *Answer*, sign it, and return it to the clerk on the same day as *First Appearance* if you are requesting a trial. You must give a copy of the *Answer* to the landlord and you should keep a copy for yourself.

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<sup>14</sup> 90.255

<sup>15</sup> 105.137(7)(a)

When you file your *Answer*, you will also have to pay a filing fee the day of *First Appearance*.<sup>16</sup> If you cannot afford the fees, you can request either a fee waiver or a fee deferral by filling out an Application for Waiver or Deferral of Fees. This Application is available at the clerk’s counter and must be filed with your *Answer*. The clerk will review your Application when you file your *Answer* to determine if you are qualified for either a waiver or a deferral based on your income. If you are granted a fee deferral, the clerk will likely establish a payment schedule for your court fees.<sup>17</sup> If you win your case, ask the court to order the landlord to pay your fees.

**Using the form *Answer***

The *Answer* is a form that lists the most common defenses to an eviction. It is an easy way to tell the court how you want to defend yourself. If you want to use the answer, you must also want to stay in your rental unit and must have a good defense.. You cannot use the *Answer* to get money from your landlord. If you think your landlord owes you money, you should see a lawyer. If you are low income and cannot afford a lawyer, Legal Aid or the Oregon Law Center may be able to help you.

Before you fill out the *Answer*, look at the Complaint that came with your Summons to see which reason your landlord checked for the eviction. Also, look at the Termination Notice you received from the landlord to see if it matches the reason the landlord checked.

You must pick up a copy of the *Answer* at either the courtroom that your *First Appearance* is held in or the clerk’s counter of the Courthouse.

**How to Decide What Defenses You Can Claim**

A defense to an eviction is a legal reason that you should not be evicted. The kind of defense that you can claim depends on which type of Termination Notice the eviction is based. For example, lack of repairs can be a defense to an eviction based on a notice for nonpayment of rent, but it may not be a defense to an eviction based on a 30-day notice for breaking the rental agreement. The chart below shows the most common types of Termination Notices and the defenses that can be used. More details about each defense are provided in the descriptions below.

TYPE OF TERMINATION NOTICE	SOME POSSIBLE DEFENSES
10/ 13 Day notice - nonpayment of rent	<ul style="list-style-type: none"> <li>• Eviction notice is wrong/Bad notice</li> <li>• Repairs needed</li> <li>• Other defense, e.g., rent in excess of the rent stabilization limit, waiver, lockout, illegal entry by your landlord, etc.</li> </ul>
“No cause” notice: - 30 day (for month-to-month tenancies, but <u>only</u> where any of the renters in unit have lived there less than one year)	<ul style="list-style-type: none"> <li>• Eviction notice is wrong/Bad notice</li> <li>• Retaliation</li> <li>• Discrimination</li> </ul>

<sup>16</sup> 21.110

<sup>17</sup> 21.682 and 21.685

<p>- 30 day (only allowed at the <b>end</b> of a fixed term tenancy, if the lease runs for less than 1 year)                  - 60 day (only allowed if the landlord lives on the same property as the renter &amp; there are only two units on the property &amp; all of the renters have lived in the unit for more than a year)                  - 10 day (for week-to-week tenancies)</p>	
<p>30 day for cause notice or 10 day notice for repeat violation</p>	<ul style="list-style-type: none"> <li>• Eviction notice is wrong/Bad notice</li> <li>• Retaliation</li> <li>• Discrimination</li> <li>• Incident landlord wrote in notice did not happen or is not good cause to evict</li> </ul>
<p>24 hour notice</p>	<ul style="list-style-type: none"> <li>• Eviction notice is wrong/Bad notice</li> <li>• Retaliation</li> <li>• Discrimination</li> <li>• Incident landlord wrote in notice did not happen or is not good cause to evict</li> </ul>
<p>Landlord Reason notice (90 day notice)</p>	<ul style="list-style-type: none"> <li>• Eviction Notice is wrong/Bad notice</li> <li>• Retaliation</li> <li>• Discrimination</li> </ul>
<p>Three Strikes notice (90 day notice)</p>	<ul style="list-style-type: none"> <li>• Eviction notice is wrong/Bad notice</li> <li>• Retaliation</li> <li>• Discrimination</li> </ul>

## Defenses to an Eviction

### The Lack of Repairs Defense

If the eviction is based on a notice for nonpayment of rent, you may have a defense if your landlord has not made repairs. Renters have the right to housing that is in good condition. The law requires that landlords provide premises that have:<sup>18</sup>

- Effective waterproofing and weather protection of roof and exterior walls, including windows and doors.
- Plumbing facilities maintained in good working order.
- A water supply approved under applicable law, capable of producing hot and cold running water, furnished to appropriate fixtures, and connected to a legally approved sewage system maintained in good working order.
- Heating facilities approved under applicable law, maintained in good working order.
- Electrical system approved under applicable law, maintained in good working order.
- Been cleaned at the beginning of the tenancy, are free from debris, filth, rubbish, garbage, rodents and vermin, and with areas under the control of the landlord kept clean.
- An adequate number of garbage receptacles maintained in clean condition and good repair, unless the landlord and renter made some other arrangement to handle garbage and garbage removal.
- Floors, walls, ceilings, stairways, and railings maintained in good repair.
- Ventilation, air conditioning, and other appliances (including elevators) in good repair, if supplied by the landlord.
- Safety from fire hazards, including a working smoke alarm or smoke detector.
- Working locks for all entrance doors, keys for those locks, and latches for windows.

If the landlord does not supply any of these things, then the renter should be entitled to show that some of the rent is not due.

If you are claiming that the landlord did not make repairs, you should mark that line and then in the appropriate space list the specific repair problems.

*EXAMPLE:*      X   *The landlord did not make repairs. List any repair problems:*

- *The roof leaked for four months causing \$100 in damage to furniture and \$300 reduced rental value. Renter notified landlord four months ago by phone.*

You cannot win on the “repairs needed” defense alone unless you can either:<sup>19</sup>

1. Show that the amount of money that the landlord owes you because of the lack of repairs is at least as much as you owe in rent, OR
2. Pay the total amount of rent due into the court before trial.

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<sup>18</sup> 90.320

<sup>19</sup> 90.370

Generally, you will have to convince the judge that your landlord knew of the repair problems and failed to make the repairs.<sup>20</sup> If your only proof that you asked for repairs or that your landlord knew of the need for repairs is your word and your landlord denies that you asked for repairs, you may lose. You should **always** request repairs in writing, date your letter, and keep a copy for yourself.

You should be prepared to show that the repairs the landlord failed to make reduced the monthly rental value of your home by a certain amount or percentage, and that this amount, multiplied by the number of months the problem existed, is equal to or greater than the amount of rent you owe. You must tell the judge how much you think the lack of repairs have damaged you in monetary terms. You should have a specific figure in mind, such as “30% of the rent” or “\$50 per month.”

*For example, if the roof leaked into one of the two bedrooms in your apartment and you couldn't use that bedroom you could argue that the value of your residence by 1/3. Suppose this went on for three months in the winter. Multiply a third of a month's rent by three and you have damage equal to one month's rent.*

In addition, the renter may make a claim for damages to personal property because of repair problems. *For example, if a leak in the roof damages furniture, the renter may also recover the dollar value of cleaning, or, if necessary, replacing the furniture.* You will lose the case if the judge decides that the dollar value of the repair problems is less than the unpaid rent, unless you either can make up the difference with other claims under the Oregon Residential Landlord Renter Act or you paid the amount of rent into court.

#### The Retaliation Defense

If the eviction is based on a 30-day notice, a 10-day no-cause eviction notice (week to week renters only) or a 24-hour notice, you may have the defense of retaliation. You must mark the second line on the *Answer* to use the retaliation defense.<sup>21</sup>

Your landlord cannot evict you in retaliation for any of the following actions:<sup>22</sup>

- Testifying against your landlord in some other legal proceeding.
- Successfully defending an eviction case in the past six months against your landlord, unless the reason the renter won is because there was an error with either the service of the Termination Notice or the time period it stated.
- Organizing other renters or membership in a renters' union.
- Complaining to a governmental agency regarding violations involving building, health or safety codes, housing discrimination, or delivery of mail.
- Insisting on your rights under the law.
- Complaining to the landlord in good faith about anything related to the tenancy, including:
  - the condition of the rental unit

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<sup>20</sup> 90.370(1)(a)

<sup>21</sup> 90.385(3)

<sup>22</sup> 90.385(1)

- a rent increase given without a proper 30-day written notice
- landlord shutting off utilities
- landlord locking you out of your apartment
- landlord abusing access to your apartment
- landlord failing to tell you the name and address of the manager and owner or person authorized to act for the owner and to receive notices
- failure to disclose that utilities paid for by the renter benefit the landlord or other renters
- violations of a written or oral rental agreement

The retaliation defense will not work if you are being evicted **for failing to pay rent**, unless you can prove that no rent is due.<sup>23</sup>

#### Status as a Victim of Domestic Violence, Sexual Assault or Stalking

If the eviction is based on a 30-day notice, a no-cause eviction notice (week to week renters only) or a 24-hour notice, you may have a defense if you or someone in your household is a victim of domestic violence, sexual assault or stalking.<sup>24</sup> You must mark the third line on the *Answer* to use this defense.

Your landlord cannot evict because of the fact that:

- You (or someone in your household) are, or have been in the past, a victim of domestic violence, sexual assault or stalking;
- You (or someone in your household) violated your rental agreement or Oregon law, if the reason for the violation was an act of domestic violence, sexual assault or stalking against you;
- The police came in response to a call regarding domestic violence, sexual assault or stalking against you;
- Any other criminal activity took place relating to domestic violence, sexual assault or stalking when you (or someone in your household) were the victim; or
- An abuser caused damage to your rental related to an act of domestic violence, sexual assault, or stalking.<sup>25</sup>

An important exception to these rules is that a landlord *can* evict you for any of the above reasons if the landlord gave you a written warning regarding the conduct of the abuser and you either:

1. Allowed the abuser onto the premises and the abuser is a threat to others on the premises; or
2. The abuser is an unauthorized occupant and you consented to the abuser living with you without the landlord's permission.

#### The Eviction Notice is Wrong Defense

The fourth line listed on the *Answer* says "The Eviction Notice is Wrong." This is the line to check and if the landlord's Complaint is not true in one or more respects. For example this defense would apply if the landlord filed the Complaint on the basis of nonpayment of rent and you have receipts to show

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<sup>23</sup> 90.385(4)(c)

<sup>24</sup> 90.449

<sup>25</sup> 90.325(3)

that the rent was paid or if the landlord is evicting you for numerous noise complaints and you did not cause the noise.

This defense may also be used if the Termination Notice you were given is bad or invalid. In order to decide whether you can use this defense or not, you will have to look at the Complaint that the Sheriff served you. The Complaint has a series of boxes next to the type of Termination Notice on which the eviction is based. The copy of that Termination Notice should be attached to the Complaint. The type of notice checked should match the type of Termination Notice that is attached to the Complaint.

You can use this defense if the Termination Notice the landlord gave you did not contain information about services available for veterans. You do not need to be a veteran to use this defense. Any Termination Notice that does not contain information about services for veterans is legally invalid.<sup>26</sup>

The Termination Notice must also have been served properly. It must be served by one of the following methods:

- Mailed via first-class (not certified) mail to your address. If the notice is served by mail, three days must be added to the move out date in the Termination Notice.
- Hand delivered to you. In this case the notice period starts immediately.
- Both posted to your door and mailed to you via first-class mail only if the rental agreement explicitly allows for this type of service by both the renter and the landlord. In this case the notice period will start immediately.
  - If the rental agreement does not explicitly allow this type of service for both the landlord and the renter, then the usual three days for mailing must be added to the notice period.

If your notice was not served by one of these three methods, then you have a defense that the eviction notice is wrong.

This defense can also be used if your landlord gives you a notice that is not allowed by law given how long you have lived there. For example, if you have lived in your home for over a year and your landlord does not live on the same property which only has two units, your landlord can not give you a No Cause Termination Notice.

This defense can also be used if your landlord gives you a notice that does not include all the information that is required by the law. For example, a 30 Day For Cause Notice must specifically state the alleged lease violation and give you the right to remedy the violation. If the notice you receive does not specifically state the alleged lease violation or does not give you the right to remedy, then you should use this defense.

Another example of how this defense can be used for a bad notice is if you get a Three Strikes Notice at the end of a fixed term lease after you have lived there at least one year but the landlord did not give you three prior Warning Notices that each meet the requirements of the law.

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<sup>26</sup> 90.391



### Other Defenses

The fifth line listed on the *Answer* says “List any other defenses:” followed by blank lines where you may list defenses. The following are some possible other defenses:

#### **Landlord didn’t give required information for nonpayment**

If a landlord is trying to evict a renter because of nonpayment, the landlord must include a notice with the termination notice about where to get legal help and rent assistance. If the landlord did not include that notice, the renter has a defense to the eviction.

If the landlord is evicting based on **nonpayment** (not for anything else) and the landlord did not include information about where to find legal help with the termination notice, check the line on the *Answer* for “Other Defense.” Write “landlord did not include notice for help with nonpayment.”

#### **Landlord prevented renter from paying/ landlord refused to work with rent assistance**

For nonpayment cases, if a landlord caused the nonpayment, including by refusing to work with a rent assistance provider, the renter has a defense to the eviction.

If the landlord is evicting based on **nonpayment** (not for anything else), a renter may have a defense if the landlord did any of the following:

- refused to accept payment from a rent assistance provider
- refused to supply necessary information to a rent assistance provider
- prevented the renter from paying rent (for example, by shutting down an online portal or closing an onsite office)

If the eviction is based on nonpayment and the landlord prevented the renter from paying the rent, check the line on the *Answer* for “Other Defense.” Write “landlord prevented me from paying rent.” Then write a short explanation of how the landlord prevented the renter from paying rent. For example, “Landlord refused to accept payment from rent assistance.”

#### **Waiver**

The following may eliminate your landlord’s right to evict you for a violation of the rental agreement:<sup>27</sup>

- If your landlord knew of the violation but accepted your rent for three or more months and did not refund the money within ten days;
- If your landlord accepted certain behaviors of yours that may have been different than what was agreed to in the rental agreement;
- If your landlord accepted rent for a period beyond your court date; or
- If your landlord accepts a partial rent payment *after* giving a nonpayment notice, your landlord cannot file an eviction based on nonpayment of rent that month unless the renter has signed a written agreement indicating otherwise.<sup>28</sup>

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<sup>27</sup> 90.412(2)

<sup>28</sup> 90.417(4)

If the landlord did any of the above, check the fifth line on the *Answer* under “Other Defenses” and write the word “Waiver.”

*Example: “Landlord waived right to evict based on June 10 notice by accepting rent on June 12.” Make sure you take proof of payment to the trial.*

### **Discrimination**

Another possible “Other Defense” is Unlawful Discrimination. Federal, State, and some local laws say it is illegal for a landlord to discriminate on the basis of a renter’s:

- race
- color
- sex (except in cases where common bed or toilet facilities would result)
- marital status
- religion
- national origin
- physical or mental handicap
- source of income
- creed
- familial status (whether you have children or not)
- age
- sexual orientation<sup>29</sup>
- gender identity

Generally, the discrimination defense will not work against an eviction for nonpayment of rent.<sup>30</sup> If you have received a 30-day notice to move without cause, and you believe the real reason is discrimination under the law, you may be entitled to use that defense. You will have to prove to the judge that your status as one of one of the protected classes of people listed above is the reason that your landlord is trying to evict you. Also if the lease breaking behavior is caused by a physical or mental disability, you can ask your landlord to overlook this lease violation and not evict you by making a Reasonable Accommodation request. If you believe you might have grounds to make a Reasonable Accommodation request, you should call Legal Aid or the Oregon Law Center if you are low income. Otherwise, call the Lawyer Referral Service of the Oregon State Bar (503-684-3763 or toll free in Oregon at 800-452-7636) and ask them to refer you to a lawyer. You might also call the Fair Housing Council at 1-800-424-3247.

You can also file a complaint with the Civil Rights Division of the Oregon Bureau of Labor. Complaint forms are available by calling (971) 673-0761. You have one year from the date of the discrimination to file an administrative complaint and two years to file an action in court.

### **What Do I Do With the Answer?**

When you have finished filling out the *Answer*, you should sign and date it. Then:

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<sup>29</sup> 659A.421(1)

<sup>30</sup> 90.390(2)

- File one with the court,
- Mail one to your landlord, and
- Keep one for yourself and bring it to trial.

### Preparing Your Case

You should be prepared to back up every statement that you make in the *Answer* with as much proof as possible. If you are going to have witnesses besides yourself, they must go to your trial with you. The court will not accept written statements even if they are notarized. Go over the case with your witnesses carefully. Make sure your witnesses understand what you are going to ask of them and that they are prepared to state the facts honestly about what you want to prove at trial.

If you are claiming that you did pay your rent, you should have receipts, cancelled checks, and any other documents that prove that claim.

If you are claiming that there were repairs needed and not done, it is very helpful to have photographs to show the extent of the problem. If you have photos on your phone, be sure to print out copies to give to the judge and the other side. If there are other people who saw the problems that needed to be repaired, be sure to have them as witnesses. If you live somewhere that has city building inspection program and they came to inspect the property, you should be sure to have a copy of the building inspector's report with you to show the judge. If you spent money on repairs, show the receipts for what you spent to the judge.

Establishing a clear timeline of any important events that occurred will be helpful when presenting your case. It is a good idea to make timelines of these events before coming to trial, which will help you to present the story clearly and accurately to the court.

### What If I Remember Something Later?

Suppose you have already filed your *Answer* to the eviction and you forgot to include all of the repairs that you had been asking the landlord to make or you forgot to check all the defenses that apply. You have the right at the trial to request that these other facts and/or defenses be included in your *Answer*. If you make that request, the landlord will have the right to get a later trial date in order to respond to your new defenses.<sup>31</sup>

You should only do this if you really forgot to include all the defenses originally. You should not abuse this right just to prolong the case. You should do your best to include all defenses in your original *Answer*.

### Should I Ask For a Jury Trial?

Either side has the right to ask for a jury trial.<sup>32</sup> However, we recommend that you *talk to a lawyer* before requesting a jury trial. The preparation for a jury trial can be complicated. It is generally

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<sup>31</sup> ORCP 52

<sup>32</sup> ORCP 50

recommended that renters without a lawyer do not request a jury trial. If a renter doesn't follow the right procedure for a jury trial, the renter might lose..

### **Paying Rent Into Court**

If the trial is not held within a specific amount of time after *First Appearance*, and the delay is not the fault of the landlord, the judge can order the renter to pay rent into the court.<sup>33</sup> If a renter requests a delay of trial of more than two days, the judge can also order the renter to pay rent into the court. If the renter cannot pay this rent amount into court on the day of the request, the trial may be held immediately.<sup>34</sup> If a renter counterclaims, the landlord can file a special motion for an order directing the renter to pay rent into court.<sup>35</sup> If the renter does not then pay his or her rent into court, he or she will not be allowed to assert the counterclaim.<sup>36</sup>

### **Curing a nonpayment eviction with payment**

If an eviction case is based on nonpayment, renters can pay the full amount the landlord says is owed on the termination notice at any time up until the trial. **If you ask for a trial, you can still pay the full amount the landlord says you owe up until the end of the trial.**

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<sup>33</sup> 105.137(6)

<sup>34</sup> 105.140(2)

<sup>35</sup> 90.370(1)(b)

<sup>36</sup> 90.370(3)

## PART III. TRIALS

### How a Trial Works

The first thing to remember about a trial is: STAY CALM and focus on the issues related to the Termination Notice and your defenses. The judge will not want to hear about your history with the landlord if it is not related to the case. Also, sometimes the judge may decide whether you and your witnesses are believable based on how you and your witnesses act and how present yourselves. Be professional and polite and dress as if you were going to a job interview.

### Opening Statements

Many judges will start the trial by asking that each side give their opening statements. Your opening statement should be short (no more than a couple minutes long) and summarize what your position is in the case. You should give the judge some background including when you moved in, the amount of rent you pay, what the basis for the eviction is, what your response is to the landlord's position in the case, and what your defenses are. **If the case is based on nonpayment, and you have paid the amount the landlord says you owe, have tried to pay that amount, or have that amount with you in court, tell the judge.** Also tell the judge if you have witnesses that will be testifying at the trial and what exhibits you plan to present to the court.

### Your Landlord's Case

Next the plaintiff (your landlord) will be allowed to present their case. That means that the landlord will testify and/ or call any witness. After your landlord has finished, the judge should give you the opportunity to cross examine your landlord and any of the landlord's witnesses.

The claims your landlord make must be limited to what was stated in the complaint. The only exception to this rule is if you are raising a retaliation defense to a no-cause eviction. In such a case, although your landlord did not have to state a reason for the eviction originally, the landlord would be allowed to show that there were other reasons for the eviction that had nothing to do with retaliation.

*For example, if the eviction is for past due rent, your landlord should not be allowed to include evidence about other complaints, such as noise complaints from your neighbors about you. You should object if the landlord tries to bring these things up -- unless they are the basis of the eviction.*

### Your Case

After your landlord has put on all of their evidence, you will be able to present your side of the case. This is your time to present any evidence you have to support your defenses. Evidence is information that supports facts you are trying to prove to the judge or shows that facts the landlord is trying to prove are less likely to be true. You will want to present witness testimony and exhibits.

- **Witness testimony:** You and any witnesses you bring with you to court can tell the judge what they saw or heard. You will be allowed to ask your witnesses questions that help disprove what the landlord claims and/or prove your defense. The judge should not consider written statements of

persons not present in the courtroom because you and your landlord have a right to cross-examine a witness about the statements. You should object to the use of written statements.

- **Exhibits:** Exhibits can include any documents, letters, receipts, or photos. If you have exhibits you want to present first show it to your landlord. If your landlord makes no objections, then you may bring it up to the judge to be admitted for the court to consider. Select the strongest exhibits you have and bring them to court. Be careful not to use too many exhibits because you want your case to be clear and not confusing. **Bring three copies of every exhibit you want the court to look at:** one for the judge, one for the landlord, and one for you.

### Rebuttal

Next, your landlord will have a chance to rebut any claims which you made in presentation of your side of the case.

### Closing Arguments

Finally, the judge will allow both you and your landlord time to make a closing argument. During your closing argument, you should take the opportunity to briefly summarize your case, highlighting the most important conclusions that the court should draw from your evidence or from the testimony of any witnesses.

### The Trial Judgment and What It Means.

After both sides have presented their cases, the judge will make a decision.

If you (the defendant) win, the Judgment means that you get to stay in your home. Make sure you find out from the judge when you will have to start paying rent again. Also make sure to ask the judge to award you prevailing party fees, court costs and attorney's costs if any. (If the case is dismissed because you paid the full amount owed after the case started, you will not be awarded fees or costs.)

If you win, and your landlord tries to evict you again within the next six months for something other than nonpayment, you may have a defense.<sup>37</sup>

If your landlord (the plaintiff) wins, the Judgment will say that you have to move out by a certain date. The move out date must give you at least four days to move out. You can ask the judge for some more time to move, but the judge is generally not required to give you any extra time. The Judgment probably will also award your landlord court costs and any attorney fees.<sup>38</sup> Even if you move by the date set, you will still be responsible for any fees or court costs awarded to your landlord. The landlord may take these costs out of your security deposit.<sup>39</sup> If you earn less than minimum wage, or receive SSI, it will be difficult for your landlord to collect money from you.

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<sup>37</sup> 90.385

<sup>38</sup> 90.255

<sup>39</sup> 90.300(5)(a)

The eviction will stay on your record for five years, and a future landlord may reject your application based on the eviction until five years have passed.

## PART IV: AFTER THE TRIAL

### Moving Out

If you lose your eviction trial, you should try to move out by the date listed on the judgment. If you move out by the date on the judgment, then the case is over.

If you do not move by the date in the Judgment, your landlord has to go to the court and then to the Sheriff's office in order to remove you and your belongings from the property. Under no circumstances can your landlord remove you without the Sheriff's help – ONLY the Sheriff can remove you.

After the Judgment is issued in your case, your landlord will obtain a document from the court called a Notice of Restitution. You have four days from the time you are served with this notice to remove yourself and your belongings from the property. After the expiration of the four days, your landlord must go back to the clerk of the court for a Writ of Execution of Judgment of Restitution. This Writ will be served upon you by the Sheriff, who will remove you from the property at that time, and will change the locks.<sup>40</sup>

### Getting your property back

The Sheriff will not remove and store a renter's belongings. Usually your landlord will store your belongings but the Sheriff must first actually remove you.

Before your landlord may lawfully sell or get rid of the items you left at the property, they are required to notify you in writing either by personal delivery or by first class mail, addressed to your last known address.<sup>41</sup> When you move out make sure you give the landlord your new contact address in writing so the landlord can send you the Notice of Abandoned Property. Otherwise this Notice will be sent to the property you just moved out of.

Contact your landlord immediately when you receive this Notice. If you fail to contact your landlord within five days (if the landlord personally handed the Notice to you), or eight days (if the landlord mailed the Notice to you), then the landlord can dispose of your items. If you contact your landlord in time, he or she must allow you to pick up your items within the next 15 days without requiring you to pay any money. Your landlord may add storage fees to the total amount you owe and attempt to collect this money later but, if you moved out because your landlord evicted you, your landlord cannot require you to pay these extra fees before you take your items. If you have not picked up your things after 15 days your landlord will be able to sell or otherwise dispose of them.<sup>42</sup>

If you would like to talk to an attorney about your rights, you can find contact information for a legal aid office near you at <https://oregonlawhelp.org/find-legal-help>.

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<sup>40</sup> 105.151

<sup>41</sup> 90.425(3)

<sup>42</sup> 90.425(8),(9)



#### **Additional resources**

Free legal help may be available from the Eviction Defense Project. You can call the Eviction Defense Project at 888-585-9638 and leave a message Monday-Friday from 9-1PM. Or you can fill out a web form at <https://oregonlawcenter.org/eviction-defense-project/> at any time.

Legal Aid Services of Oregon and the Oregon Law Center serve low-income residents. You can find your local office at [www.oregonlawhelp.org](http://www.oregonlawhelp.org)

The Lawyer Referral Service of the Oregon State Bar offers referral to private attorneys for a \$35 advice appointment: 503-684-3763, <https://www.osbar.org/public/ris>

The Bureau of Labor and Industries (BOLI) Civil Rights Office investigates complaints of housing discrimination and enforces fair housing law: 971-673-0761, <https://www.oregon.gov/boli/civil-rights/Pages/housing-discrimination-complaint.aspx>

The Fair Housing Council provides information, resources and assistance in fair housing cases: 1-800-424-3247, <https://fhco.org/report-housing-discrimination/>

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